CF0000064579

(2)

IN THE HIGH COURT OF JUDICATURE OF M.P. AT JABALPUR

Criminal Appeal No. 2496 /2000

Appellant :- Mangle Sai son of Sukhdeo Gond aged 45 years resident of Village Rajpuri, Police Station Lakhanpur Distt. Durguja M.P.

In Jail

Respondent :- State of M.P. through Police Station Lakhanpur Distt. Surguja M.P.

(10411)

Conviction : Under Section 302 I.P.C.

Sentence : Life imprisonment and fine of Rs.1,000/-.

4/10/2k

Shri S.K. Mishra Advocate

Criminal Appeal under Section 374 Criminal Proc. Code

B.A.R

XI-HC-78

(116)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....Cr.A.No.2496/ **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

21-2-2007

Shri J.S. Baraik, Advocate for the appellant.
Mr. M.P.S.Bhatia, P.L. for the respondent/State.

Arguments heard.

Oral judgment dictated on Dais.

Per L.C.Bhadoo, J. :

By this appeal, the appellant has questioned legality and correctness of judgment of conviction and order of sentence dated 31.07.2000 passed by Sessions Judge, Sarguja in Sessions Trial No. 365/1998, whereby the learned Sessions Judge, after holding the accused/appellant guilty for commission of the offence under Section 302 of I.P.C. sentenced him to undergo imprisonment for life, to pay a fine of Rs. 1000/- and in default of payment of fine, to further undergo four months S.I.

2. Case of the prosecution, in brief, is that deceased Mst. Parmavati was only daughter of her parents. She was married to Sumran Singh S/o. Mangal Singh. He used to reside at the residence of his in-laws. Out of the wedlock there was one daughter. However, Sumran Singh left the house of his in-laws and went to his own house. Thereafter co-accused Paniku Ram kept Mst. Parmavati as his wife. Paniku Ram used to reside with Mst. Parmavati in his in-laws place. Out of the wedlock Mst. Parmavati gave birth to three daughters. On 11.10.80 when Mst. Parmavati's earlier husband Sumran Singh came to her village, co-accused Paniku Ram

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मामला क्रमांक .....Cr.A.No..2496/ **सन्** **2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –2–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

committed his murder and was convicted on 31.03.81. He was released from jail after completion of sentence. There was some dispute between Mst. Parmavati and Paniku Ram, therefore he left the house and started residing in village Kenwra. Mst. Parmavati used to reside all alone in village Pakhnapara. As Paniku Ram was deprived of cultivation of agricultural land, he used to say to the villagers that he will eliminate Mst. Parmavati. Accused/appellant Mangal-cousin brother of Mst. Parmavati started residing in a house near to her house. He also used to raise dispute for share in the land with Mst. Parmavati. All the three daughters of Mst. Parmavati were married. Since last two years, one Nandkeshwar (P.W.-1) used to cultivate the land of Mst. Parmavati on the basis of 50% share in the crop. In the year 1998, Nandkeshwar had sown the crop on the basis of 50% share. On 12.10.1998 Nandkeshwar asked Mst. Parmavati to come on the field when the crop become ripe for harvesting as the accused/appellant Paniku Ram used to raise dispute. On that day Mst. Parmavati came to the agricultural field at about 12.00 noon and she stayed there upto 3.00 p.m. and after giving assurance that she will come next day i.e. on 13.10.98, returned back. But she did not come on the said date. On 14.10.98 when Nandkeshwar went to the house of Mst. Parmavati at village Pakhnapara, her house was found locked. On enquiry from Sukhlal Panika and Bhaira – son of accused/appellant Mangal, they informed that they did not know anything about Mst. Parmavati. On 14.10.98 Gendaha Ram Rajwade, Secretary, Gram Panchayat Parsodi Kala saw a gunny bag in the bed of river Ghunghuta. He informed in police station Lakhanpur at about 12.30 which was entered in Rojnamcha Sanha No. 526 (Ex.P-10) by Bechu Singh (P.W.-8). Bechu Singh (P.W.-8) informed S.D.O.P. Ambikapur on telephone on which he asked to inform

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मामला क्रमांक ……Cr.A.No.2496/ **सन्** 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –3–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the concerned police station Jainagar. Gendaha Ram also informed to police station Jainagar. On 15.10.98 Bechu Singh (P.W.-8) reached to the bed of the river where in presence of the witnesses the bag was taken out of the river. On opening the bag one female body was found. The body was in swollen condition. Panchnama (Ex.P-11) was prepared regarding recovery of the body of a woman. Dehati merg intimation Ex.P-12 was written. After giving notice to the panchas under Ex.P-13 inquest was conducted as per Ex.P-14. The body was sent for post mortem to Primary Health Centre, Lakhanpur under Ex.P-15. On 15.10.98 site plan was prepared under Ex. P-18. Dr. M.H.Parmar, Block Medical Officer, Primary Health Centre, Lakhanpur (P.W.-3) conducted post mortem on 16.10.98. He opined that cause of death was asphyxia resulting from strangulation and it is homicidal in nature. Clothes and other articles of the deceased lady were taken into possession. Clothes, blouse, tops, bangles, locket and black thread were identified under Ex.P-1. On 17.10.98, on the memorandum of the accused/appellant Mangal under Ex. P-22, one key was recovered under Ex. P-23. Based on that key, lock of the room of deceased Mst. Parmavati was opened under Ex. P-24. After completion of investigation charge sheet was filed against the co-accused Paniku Ram and Mangal in the Court of Chief Judicial Magistrate, Ambikapur who in turn committed the case to the Sessions Judge, Ambikapur where the prosecution in order to establish the charge against the accused persons examined thirteen witnesses. Statements of accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and pleaded innocence and stated that they have been falsely implicated in the crime in question. Accused Paniku Ram was acquitted, however,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused/appellant Mangal was convicted after hearing learned counsel for respective parties as aforementioned.

3. We have heard Shri J.S Baraik on behalf of accused/appellant and Shri M.P.S.Bhatia on behalf of the State. In this case, there is no ocular or direct evidence connecting the accused in the crime in question. The whole case rests on circumstantial evidence that

i) the body of Mst. Parmavati was identified based on clothes, locket with black thread, tops and bangles which were found on the body of the deceased.

ii) one key was recovered at the instance of the accused/appellant Mangal by which lock of the room of the deceased was opened by the police.

iii) the present accused Mangal was having eye on the land of deceased Mst. Parmavati, being cousin brother and that is why he wanted to eliminate her.

4. We have perused the evidence. As far as first circumstance is concerned, before sending the body for post mortem examination the same was not photographed. Even perusal of the inquest report Ex.P-14 shows that the inquest was prepared on the body of an unknown female. Similarly post mortem report Ex.P-5 also shows that post mortem was conducted on unknown body of a female and thereafter the body was disposed of and it was identified on the basis of clothes, bangles, locket with black thread and tops. In this case almost all the witnesses have turned hostile. Even P.W.-11 Punit Das and P.W.-12 Lal Das have also

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ……Cr.A.No.2496/ **सन्** 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

turned hostile. P.W.-11 Punit Das has stated that no investigation was conducted from accused persons before him, memorandum Ex.P-2 was not given by Paniku Ram. He has also stated that memorandum Ex.P-22 was not given by accused Mangal Sai and key was not recovered at the instance of accused, even the key was not applied for opening the lock of the room of the deceased. Similar is the evidence of Lal Das P.W.-12 who has also turned hostile and stated that Mangal Sai did not disclose anything about the key and lock. Mangal Sai did not tell anything to the police in his presence. He has not stated that accused gave memorandum in his presence. He has also not stated that the key was recovered at the instance of the accused. He stated that it is incorrect to say that the key was applied in his front for opening the lock of the house of deceased Mst. Parmavati. He further stated that no key was seized in his front, therefore, both these witnesses have turned hostile. In the circumstance evidence of P.W.-13 J.P.Gupta cannot be believed. Even P.W.-4 Mst. Elikunwar daughter of the deceased has also turned hostile. She has stated that articles and clothes of her mother were not identified by her. No clothes and other articles were shown to her. In para nine of her evidence she stated that the sari, blouse, black thread, glass bangles, locket and ear tops are not of her mother. Similar is the evidence of P.W.-5 Mst. Ram Bai. She has also turned hostile and stated that the articles were not identified by her. Similar is the evidence of P.W.-6 Mst. Jagmania Bai who has also turned hostile. Therefore the prosecution has utterly failed to show that the dead body was of Mst. Parmavati.

5. So far as seizure is concerned, witnesses of seizure P.W.-11 Punit Das and P.W.-12 Lal Das have turned hostile and they have not supported

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the memorandum given by the accused and recovery at his instance. Therefore the prosecution has utterly failed to establish that the key was recovered at the instance of the accused. Similarly the prosecution has not been able to establish that the key was recovered at the instance of Mangal and with the help of same, lock of the room of the house of deceased Mst. Parmavati, was opened.

6. So far as third circumstance that accused Mangal was having eye on the agricultural land of Mst. Parmavati, there is no iota of evidence available on record to show that accused was having eye on the land of Mst. Parmavati or he was claiming any share on the land and any dispute was there. Therefore, the prosecution has not been able to establish the motive against the accused also.

7. In the result there is no iota of evidence available on record to connect the accused with the crime in question. We fail to understand as to how the learned Sessions Judge convicted the accused/appellant in a case of no evidence. It is unfortunate that the accused is in detention since 18.10.98 and thereby he is in detention for more than eight years.

8. In the result, conviction and sentence imposed upon the accused/appellant cannot be sustained. The appeal of the accused/appellant succeeds. He is acquitted of the charge under Section 302 of IPC, consequently conviction and sentence imposed upon the appellant is set aside. He be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.